

The opinion in support of the decision being entered today
was not written for publication and is not binding
precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JIM MCCOLLUM
and
JUDY MCCOLLUM

Appeal No. 2005-2023
Application 09/774,962

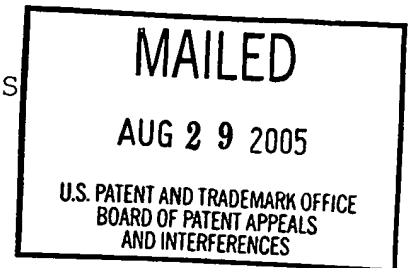
ON BRIEF

Before OWENS, JEFFREY T. SMITH, and PAWLIKOWSKI, Administrative
Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final
rejection of claims 1-8. A copy of these claims are set forth in
the attached Appendix.



Appeal No. 2005-2023
Application 09/774,962

The examiner relies upon the following references as evidence of unpatentability:

Fox	3,934,895	Jan. 27, 1976
Server Perez	4,989,889	Feb. 5, 1991
Allen	5,845,780	Dec. 8, 1998
Green	5,951,075	Sept. 14, 1999
Weldon	6,386,557	May 14, 2002
Inge	6,494,468	Dec. 17, 2002

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Fox.

Claims 1, 2, 5, and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by Server Perez.

Claims 1 and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by Allen.

Claim 3 stands rejected under 35 U.S.C. §103 as being unpatentable over Server Perez in view of Weldon.

Claim 4 stands rejected under 35 U.S.C. §103 as being unpatentable over Server Perez in view of Green.

Claim 4 stands rejected under 35 U.S.C. §103 as being unpatentable over Allen in view of Green.

Claim 8 stands rejected under 35 U.S.C. §103 as being obvious over Server Perez in view of Inge.

Claim 8 stands rejected under 35 U.S.C. §103 as being unpatentable over Allen in view of Inge.

On page 7 of the brief, appellants group the claims into five groups. Appellants do separately argue claims 1, 3, 4, 6, and 8. We therefore consider these claims in this appeal. See 37 CFR § 1.192(c)(7)(2003); now 37 CFR § 41.37(c)(1)(vii)(September 2004).

We have carefully considered appellants' brief and reply brief, the examiner's answer, and the evidence of record. This review has led us to the followings determinations.

OPINION

I. The 35 U.S.C. §102 rejection of claim 1 as being anticipated by Fox

The examiner's position is set forth on page 4 of the answer. Appellants' response to this rejection is set forth on page 8 of the brief. Appellants argue that Fox teaches a wheeled cart specifically adapted for supporting and transporting a bowling ball bag. Appellants also argue that Fox fails to "claim" an athletic bag incorporating a cart.¹

As explained by the examiner on page 4 of the answer, Fox anticipates appellants' claimed subject matter because Fox discloses every element of the claimed subject matter. With regard to appellants' argument that Fox's wheeled cart is used to transport a bowling ball bag, we note that appellants' claim 1 recites an "athletic bag". Bag 8 as depicted in Fox's Figure 1 is such a bag.

¹ As pointed out by the examiner on page 9 of the answer, the claims of a reference do not have to recite every element of appellants' claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

We note that all that is required is that bag 8 is capable of functioning as an athletic bag. It is reasonable to conclude that bag 8 of Fox is capable of operating in the manner claimed by appellants. That is all that is required for a prima facie case of anticipation, because when the prior art structure possesses all the claimed characteristics, including the capability of performing the claimed function, then there is a prima facie case of unpatentability. See In re Ludtke, 441 F.2d 660, 663-64, 169 USPQ 563, 566-67 (CCPA 1971).

In view of the above, we therefore affirm the 35 U.S.C. §102(b) rejection of claim 1 as being anticipated by Fox.

II. The 35 U.S.C. §102 (b) rejection of claims 1, 2, 5, and 7 as being anticipated by Servo Perez

We consider claim 1 in this rejection (appellants group claims 1, 2, 5, and 7 together; see page 7 of the brief).

The examiner's position for this rejection is set forth on pages 4-5 of the answer.

On page 8 of the brief, appellants argue that Servo Perez discloses a foldable cart for shopping and does not "claim" an athletic bag incorporating a cart.²

As explained by the examiner at the bottom of page 5 of the answer, Servo Perez teaches all the structural limitations claimed by appellants, and is capable of carrying athletic equipment. As explained above, this is all that is required for a prima facie case

² We refer to our footnote 1 with regard to appellants' incorrect position that the reference must "claim" the subject matter of appellants' claims, for anticipation.

of anticipation, because when the prior art structure possesses all the claimed characteristics, including the capability of performing the claimed function, there is a prima facie case of unpatentability. See In re Ludtke, 441 F.2d 660, 663-64, 169 USPQ 563, 566-67 (CCPA 1971).

In view of the above, we affirm the 35 U.S.C. §102(b) rejection of claims 1, 2, 5, and 7 as being anticipated by Servo Perez.

III. The 35 U.S.C. §102(b) rejection of claims 1 and 6 under 35 U.S.C. §102(b) as being anticipated by Allen

We consider claims 1 and 6 in this rejection.

The examiner's position is set forth at the top of page 6 of the answer.

Appellants discuss Allen on page 10 of the brief. Appellants argue that Allen teaches an athletic bag, but fails to "claim" a two-wheeled cart. Appellants also argue that Allen fails to "claim" an athletic bag incorporating a cart. Appellants also argue, with regard to claim 6, that Allen fails to "claim" an athletic bag fabricated of a weatherproof, flexible, heavy fabric.³

We agree with the examiner that Allen discloses a wheeled, portable, collapsible athletic equipment carrier 10 comprising a two-wheeled cart, as depicted in Figures 1 and 3, and also discloses an athletic bag incorporating the cart. We refer to the examiner's findings made on page 6 of the answer in this regard.

³ As discussed in footnotes 1 and 2, Section 102 does not require that a cited reference "claim" appellants' claimed subject matter in order to anticipate the claimed subject matter.

With specific regard to claim 6, claim 6 recites the phrase "weatherproof, flexible, heavy fabric". We note that a step in claim construction is to determine the ordinary and customary meaning, if any, that would be attributed to the term by those skilled in the art. Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001). The ordinary and customary meaning of a claim term may be determined by reviewing a variety of sources. Some of these sources include the claims themselves, see Process Control Corp. v. HydReclaim Corp., 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999), and dictionaries and treatises, Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002). The word "weatherproof" means "able to withstand exposure to weather without damage or loss of function". See Merriam Webster's Collegiate Dictionary, 10th Edition, page 1334. In this regard, Allen discloses, in column 1, beginning at line 5, that the invention relates "to carrying and storage devices and, more particularly, to an athletic bag for universally carrying, storing, and airing out athletic equipment". Hence, the bag, when used to carry equipment, for example, from an outdoor ball field to a locker room, is exposed to weather without loss of function, and hence is "weatherproof." On page 12 of the answer, the examiner points out that the broadest reasonable interpretation of claim 6 with regard to word "weatherproof" would be that the fabric would resist weather to an appreciable, but unstated degree. We agree, and note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. In re Zletz, 893 F.2d 319,

321, 13 USPQ2d 320, 322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its "broadest reasonable interpretation" consistent with the specification and claims. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997) (citations omitted).

The word "flexible" means "capable of being flexed: pliant". See Merriam-Webster's Collegiate Dictionary, 10th Edition (2000), page 445. The examiner states that the word "flexible" only requires that the fabric be capable of being bent. With regard to the claimed word "heavy", the examiner states that this word only requires that the weight of the fabric be great relative to other fabrics. In this light, we point out that, as suggested in Figure 2 of Allen, a plurality of handle and loop members 28 are secured to the walls of fabric enclosure 12. The fact that the fabric is able to support such handle and loop members 28, as well as the other items that are attached to the fabric, as shown in Figure 2, would require that the fabric is "flexible" and "heavy".

In view of the above, we therefore affirm the 35 U.S.C. §102(b) rejection of claims 1 and 6 as being anticipated by Allen.

IV. The 35 U.S.C. §103 rejection of claim 3 as being obvious over Servo Perez in view of Weldon

The examiner's position for this rejection is set forth at the bottom of page 6 of the answer.

Appellants' position is set forth on pages 8 through 13 of the brief. Appellants' argument with regard to Servo Perez is the same as discussed, supra. With regard to the secondary reference of

Weldon, appellants argue that Weldon teaches a portable cooler caddy which includes a cup holder panel, but fails to teach an athletic bag, and hence also fails to teach an athletic bag with a bottom permanently attached to the base member of the main frame. Brief, page 9.

Appellants' claim 3 recites that the cart further comprises a support stand having an elongated hollow cylindrical U-shape configuration affixed to lower external circumferential sidewalls of the U-shape portion of the base member at corners so as to provide structural stability thereto. As discussed, on page 6 of the answer by the examiner, Weldon teaches a main frame 10 with an anterior end opposite a posterior end, a hollow and tubular base member 16 forming a U-shape, and a support stand 17 with an elongated, hollow, cylindrical U-shape configuration affixed to lower circumferential sidewalls of the U-shape portion of the base member at corners, and refers to Figures 1-3 of Weldon. Also, as pointed out by the examiner on page 13, Weldon discloses a support stand that is elongated, hollow, cylindrical, U-shaped, and is affixed to the lower circumferential sidewalls of the U-shape portion of a hollow and tubular base member. The examiner states that Weldon is relied upon for teaching these particular features. Hence, appellants' arguments that Weldon fails to teach an athletic bag and fails to teach an inflating pump, are irrelevant, because the examiner explains that Weldon was relied upon for teaching the features recited in claim 3. We note that one cannot show nonobviousness by attacking references individually where the rejections are based on a combination of references. In re Merck & Co., Inc., 800 F. 2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

In view of the above, we affirm the 35 U.S.C. §103 rejection of claim 3 as being obvious over Servo Perez in view of Weldon.

V. The 35 U.S.C. §103 rejection of claim 4 as being obvious over Servo Perez in view of Green

The examiner's position for this rejection is set forth on page 7 of the answer.

Claim 4 is directed to a hand-operated inflating pump that is secured to the frame of the carrier. The examiner relies upon Green for teaching that inflating pumps have been carried with equipment carriers, and refers to column 6, lines 24-26 of Green. Answer, page 7. On page 9 of the brief, appellants argue teachings of Green that the examiner did not rely upon in making the rejection.

In response, on page 14 of the answer, the examiner correctly points out that appellants' arguments do not address the teaching of Green with regard to attachment of a hand-operated inflating pump. The examiner explains how Green teaches that the inflating pump suggests the limitations of claim 4 and when combined with Servo Perez, makes obvious claim 4. We agree.

In view of the above, we affirm the 35 U.S.C. §103 rejection of claim 4 as being obvious over Servo Perez in view of Green.

VI. The 35 U.S.C. §103 rejection of claim 4 as being obvious in view of Allen in view of Green

For the reasons we affirmed the 35 U.S.C. §103 rejection of claim 4, as being obvious over Servo Perez in view of Green, we also affirm this rejection.

Appeal No. 2005-2023
Application 09/774,962

VII. The 35 U.S.C. §103 of claim 8 as being obvious over Servo Perez in view of Inge

The examiner's position for this rejection is set forth at the top of page 8 of the answer.

Appellants do not address on the secondary reference of Inge. The examiner relies upon Inge for teaching that the practice of attaching a ball receiving cylinder 12 to the front side of a carrier was known, and refers to Figure 1 and column 3, lines 24-29 of Inge. Appellants do not dispute these findings made by the examiner.

In view of the above, we therefore affirm the 35 U.S.C. §103 rejection of claim 8 as being obvious over Servo Perez in view of Inge.

VIII. The 35 U.S.C. §103 rejection of claim 8 as being obvious over Allen in view of Inge

For the reasons that we affirmed the 35 U.S.C. §103 rejection of claim 8 as being obvious over Servo Perez in view of Inge, we also affirm this rejection.

IX. Conclusion


Each of the rejections is affirmed.

Appeal No. 2005-2023
Application 09/774,962

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136(a)(iv) (effective Sept. 13, 2003; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sept. 7, 2004)).

AFFIRMED

Terry J. Owens
Terry J. Owens
Administrative Patent Judge


Jeffrey T. Smith
Administrative Patent Judge

Beverly A. Pawlikowski
Administrative Patent Judge

)
)
)
)
)
)
)
) BOARD OF PATENT
) APPEALS AND
) INTERFERENCES
)
)
)
)
)

BAP/cam

Appeal No. 2005-2023
Application 09/774,962

Law Office of
John D. Gugliotta, P.E. Esq.
202 Delaware Building
137 South Main Street
Akron, OH 44308

APPENDIX

1. A wheeled, portable, collapsible athletic equipment carrier comprising:

a two-wheeled cart; and

an athletic bag incorporating said cart for aiding in the carrying of athletic equipment from one's vehicle to the playing area.

2. The equipment carrier of Claim 1, wherein said cart comprises:

a main frame having an anterior end opposite a posterior end and including a hollow, tubular base member forming a U-shaped which serves as a base upon which said athletic bag can be supported.

3. (Once Amended) The equipment carrier of Claim 2, wherein said cart further comprises:

a support stand having an elongated, hollow, cylindrical U-shaped configuration affixed to lower external circumferential sidewalls of said U-shaped portion of said base member at corners so as to provide structural stability thereto.

4. (Once amended) The equipment carrier of Claim 1, further comprising a hand-operated inflating pump securely attached to an outer, elongated sidewall of an upright member of said main frame in a linear fashion so as to provide a means for inflating sports balls requiring inflation.

5. (One Amended) The equipment carrier of Claim 2, wherein said cart further comprises an elongated, hollow, tubular handle formed of a U-shaped and pivotally mounted to inside external circumferential sidewalls of said main frame at said anterior end thereof.

Appeal No. 2005-2023
Application 09/774,962

6. The equipment carrier of Claim 1, wherein said athletic bag comprises a generally vertically elongated configuration having a top end opposite a bottom end and is fabricated of a weatherproof, flexible, heavy fabric.

7. (One Amended) The equipment carrier of Claim 1, wherein said bottom end of said athletic bag rests against said base member such as to form a bag mounting platform to serve as a base upon which a base of said athletic bag is permanently attached.

8. The equipment carrier of Claim 1, further comprising a pair of ball-receiving cylinders attached to the front side of the athletic bag, each said ball-receiving cylinder has a measured diameter suitable for accommodating softballs and/or baseballs.